

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MONTANA
MISSOULA DIVISION

FILED
MAY 30 2017
Clerk, U.S. District Court
District Of Montana
Missoula

ELIZABETH COLE,

CV 17-51-M-DLC-JCL

Plaintiff,

ORDER

vs.

STATE OF MONTANA,
HON. KAREN TOWNSEND, and
JANE COWLEY,

Defendants.

United States Magistrate Judge Jeremiah C. Lynch entered his Order, Findings and Recommendations on April 27, 2017, recommending that this action be dismissed. Plaintiff Elizabeth Cole (“Cole”) failed to timely object to the Findings and Recommendations, and so waived her right to de novo review of the record. 28 U.S.C. § 636(b)(1)(C). This Court reviews for clear error those findings and recommendations to which no party objects. *See McDonnell Douglas Corp. v. Commodore Bus. Mach., Inc.*, 656 F.2d 1309, 1313 (9th Cir. 1981); *Thomas v. Arn*, 474 U.S. 140, 149 (1985). Clear error exists if the Court is left with a “definite and firm conviction that a mistake has been committed.” *United States v. Syrax*, 235 F.3d 422, 427 (9th Cir. 2000) (citations omitted). Because the parties are familiar with the facts of this case, they will not be repeated here.

Having reviewed the Findings and Recommendations, the Court finds no clear error in Judge Lynch's conclusion that this matter should be dismissed because Cole's claims under 42 U.S.C. § 1983 fail as a matter of law. First, Cole fails to plead any facts which would suggest that Defendant the State of Montana violated her constitutional rights. Second, Defendant Jane Cowley was not acting as a state actor when she obtained a restraining order against Cole and thus is not subject to liability under § 1983. Third, Cole's claims against Defendant Judge Townsend also fail due to judicial immunity.

Accordingly, there being no clear error in Judge Lynch's Findings and Recommendations, IT IS ORDERED that:

(1) Judge Lynch's Findings and Recommendations (Doc. 5) are ADOPTED IN FULL.

(2) Plaintiff Elizabeth Cole's Complaint is DISMISSED without leave to amend.

Dated this 30th day of May, 2017.



A handwritten signature in black ink, appearing to read "Dana L. Christensen". The signature is fluid and cursive, with a large, stylized initial 'D' and 'L'.

Dana L. Christensen, Chief Judge
United States District Court